

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:10CR471 HEA
)	
ANTONIO SHAW,)	
)	
Defendant.)	

OPINION, MEMORANDUM AND ORDER

This matter is before the Court on Magistrate Judge Terry I. Adleman's Memorandum and Recommendation that the Government's Motion to Sever Defendants, [Doc. No. 187], be granted. Defendant Shaw has filed Objections to the Memorandum and Recommendation.

When a party objects to a magistrate judge's report and recommendation, the Court must conduct a *de novo* review of the portions of the report, findings, or recommendations to which the party objected. See *United States v. Lothridge*, 324 F.3d 599, 600 (8th Cir.2003) (citing 28 U.S.C. § 636(b)(1)). This includes a *de novo* review of the magistrate's findings of fact, including any credibility determinations. *Id.* The court has reviewed the entire record, including listening to the audio tape of the hearing held on April 24, 2012, and reading the transcript thereof.

Defendant objects to Judge Adelman's recommendation that the government's motion to sever defendants be granted. Defendant relies on his previously filed memorandum in opposition to the motion for his objection.

In his Report and Recommendation, Judge Adelman thoroughly discusses the applicable law and analyzes in detail why he concludes that the severance should be granted. Under *Bruton v. United States*, 391 U.S. 123 (1968), severance is necessary where a limiting instruction will not adequately substitute for a defendant's constitutional right of cross examination. *Id.*, at 137.

Considering the safeguards which are necessary for Defendant's constitutional rights, coupled with prejudice which the government may experience in a redacted confession of co-Defendant Carter, Judge Adelman's conclusion that these Defendants should be severed is sound, just and necessary to preserve the constitutional rights of Defendants, as well as the integrity of a fair trial for the government and Defendants.

Defendant's objections are overruled, and the Court adopts Judge Adelman's Memorandum and Recommendation in its entirety.

Accordingly,

IT IS HEREBY ORDERED that the Government's Motion to Sever

Defendants, [Doc. No.187], is granted.

Dated this 31st day of May, 2012.

A handwritten signature in cursive script, reading "Henry Edward Autrey", positioned above a horizontal line.

HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE